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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,996	01/09/2002	Walter Blaschke	(E) 1689 PCT/US	6774

7590 02/26/2004

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EXAMINER

CLARKE, SARA SACHIE

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 02/26/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/868,996

Applicant(s)

BLASCHKE ET AL.

Examiner

Sara Clarke

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 8-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany. It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b).

Oath/Declaration

The declaration is defective because it does not identify the correct date of the German priority document. See the PCT application. See also 37 CFR 1.55, 1.63(c)(2). A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

Drawings

The drawings are objected to because of the use of a language other than English ("flüssig," "nein," and "ja"). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The substitute specification filed June 20, 2001, has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because it does not include a statement that it includes no new matter. Moreover, it includes new matter. The subject matter of paragraph 0012 is not described in the original disclosure.

The disclosure is objected to because it does not include a brief description of the drawings. See PCT Rule 5.1(a)(iv). Appropriate correction is required. On page 7 of the substitute specification, the heading "Brief Description of the Drawings" appears above

what appears to be the detailed description of the invention. The "Brief Description" should read, for example, as follows: "The figure shows ..."

The reference to the claims, on page 3 of the specification, should be deleted since the nature of the claims often changes during the course of prosecution. Note that the claims referenced have been cancelled.

The text on page 16 should be deleted because it might be mistaken for part of the claims.

Claim Objections

Claims 13-17 are objected to because of the following informalities: In claims 13 and 16, the term "laid down" is awkward and thus difficult to understand. Appropriate correction is required.

Claim 15 is objected to because it depends from a cancelled claim. Appropriate correction is required. For further examination purposes, this claim has been treated as though it depends from claim 14.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, line 3, it is unclear what "of the heating equipment" relates to. Should lines 2 and 3 be read "a control equipment ... of the heating equipment" or "a drive ... of the heating equipment?"

Claim 16 recites the broad recitation "heating equipment," and the claim also recites "a water heating equipment" which is the narrower statement of the range/limitation. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

Claim 16 depends from claim 8. Various elements in claim 16, such as the "heating equipment," "electrically operated fuel metering pump," "water heating equipment," "control equipment," "drive," "fuel medium," and "signal detector" have been doubly recited from claim 8. It is unclear whether these are the same elements recited in claim 8 or different elements.

Allowable Subject Matter

Claims 8-17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion

The prior art made of record and not relied upon is considered pertinent to


applicant's disclosure. Bonne (US 5486107) and Chin et al. (US 3894832) disclose various fuel quality sensing heating systems. Bonne (US 5311447) discloses a fuel quality measurement device. Windley (US 3493345) discloses a signal depending on motor load, which in turn depends on variations in viscosity. Finnigan (US 2158359), Lum (US 2072761), and Thomas (US 2031018) disclose various viscosity related flow systems.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Clarke whose telephone number is (703) 305-9177. The examiner can normally be reached on Thurs. and Fri., 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached at (703) 308-1935. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sara Clarke 
Primary Examiner
Art Unit 3749

23 February 2004